HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.6894 OF 1999

Between:

S. Ayub Ansar

… Petitioner

AND

APCPDCL, rep., by its Managing Director
and two others

… Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri M.V. Raja Ram

Counsel for the respondents : Shri Samineni Kishore

February 21, 2007

This petition is the second round of litigation by the petitioner in the matter of his appointment as Sub Engineer in terms of the policy framed by the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'), which was circulated vide B.P.Ms.No. 36, dated 18-5-1997.

A perusal of the record shows that Writ Petition No. 28543 of 1997 filed by the petitioner with the complaint that his case has not been considered for appointment as Sub Engineer despite the fact that he fulfils the conditions of eligibility was disposed of by the learned Single Judge on 31-10-1997 with a direction to the respondents to consider his candidature in accordance with the policy framed by the Board. In compliance of that order by the Court, Superintendent

Engineer, Operation of the Board, now APCPDCL, interviewed the petitioner on 11-4-1998, but his claim for appointment was again rejected vide letter dated
5-2-1999 on the ground that he was not on the rolls on
18-5-1997and he is not qualified to be appointed as Sub Engineer (Electrical) and no post of Sub Engineer (Civil) is available.

The petitioner has questioned the rejection of his candidature primarily on the ground that the decision of the Superintending Engineer is arbitrary and violative of his right to equality guaranteed under Articles 14 and 16 of the Constitution of India. He has averred that the policy contained in B.P.Ms.No. 36, dated 18-5-1997 does not envisage consideration of the candidature of only those who were on rolls on 18-5-1997 and, therefore, first reason assigned by the Superintending Engineer concerned not to entertain his candidature is liable to be declared as irrelevant and extraneous. He has further averred that persons who had worked with him have been considered and appointed, notwithstanding the fact that they were not having qualifications for appointment as Sub-Engineer (Electrical), but his candidature was arbitrarily rejected. In para 13 of his affidavit, the petitioner has averred as under:

> "I submit that it not understood how the respondents in his proceedings dated 28.10.1997 stated that I worked beyond 31.8.1993 and I have not produced any evidence that I worked under the control of the respondent even though certificate was issued by the third respondent herein on 9.4.1996 that I worked under the control of the respondents and on the other hand the proceedings dated 5.2.1999 shows that I was on rolls as on 18.5.1997 therefore I am not eligible. I do not know how the respondents had taken into consideration such a contention in my case whereas the persons who worked similarly along with me were also found in the rolls and their names were figured. It is pertinent to submit that one Mr. Sreenivas Murthy had been absorbed in the service and one Mr. P.Mahboob Peeran who had been continued for quite a long time and who was considered for appointment as a Sub-Oversee (now it is called as Sub-Engineer). It is pertinent to submit that in fact I worked in civil post and I was called for interview in civil post whereas

the respondent showed that I claimed for the post of Sub-Engineer (Electrical) and therefore there are no posts under Sub-Engineer in civil trade is not only objectionable but also contrary to law and contimkous in nature since I worked as Sub-Oversee in civil line and I was called for interview in that post, hence how the respondents can reject my application taking such a wrong plea. Therefore, action of the respondents shall be set aside in limine in the interest of justice".

In the counter filed on behalf of the respondents, Shri P.V.R. Prasad, Chief General Manager (HRD), APCPDCL has averred that the petitioner was not treated eligible because he was not on the rolls on 18-5-1997 and also because post of Sub Engineer (Civil) was not available in Operation Circle, Hindupur where he worked as a contract labour.

I have heard Shri M.V. Raja Ram, learned counsel for the petitioner and Shri Samineni Kishore, learned counsel for the respondents and carefully scrutinised the record.

At the outset, I consider it proper to mention that the policy contained in B.P.Ms.No. 36, dated 18-5-1997 does not contain the requirement of the employee being on the rolls on 18-5-1997 as a condition for consideration of his candidature for appointment against 50% vacancies. Therefore, one of the reasons assigned by the Superintending Engineer for not considering the petitioner's candidature has to be treated as legally unsustainable.

Shri Samineni Kishore, learned counsel for the respondents fairly conceded this position. Not only this, he stated that similar view was expressed by another Single Judge as early as in 1998 and even recently by me in another case.

In view of the above, the only issue which remains to be considered is whether the petitioner has the right to be considered for appointment as Sub Engineer (Civil) and the decision of the Superintending Engineer not to consider his candidature for appointment on that post on the premise that post of Sub Engineer (Civil) was not available is legally unsustainable.

Shri M.V. Raja Ram relied on Memo No. PO/Adm/S1/2596/ 99, dated 17-12-1999, Ex. P-5 to show that a large number of persons who had joined service after the petitioner were considered and appointed as Sub Engineers and argued that non-consideration of his client's candidature is liable to be declared as vitiated by arbitrariness and non-application of mind. He strongly relied on the averments contained in para 13 of the affidavit to show that similarly situated persons were considered and appointed by way of absorption in accordance with the policy framed by the Board.

Shri Samineni Kishore reiterated the second reason set out in letter dated 5-2-1999 and argued that the petitioner cannot seek a direction for appointment as Sub Engineer (Civil) because no post in that cadre was available as on 18-5-1997.

I have considered the respective submissions. In my opinion, the petitioner's claim for appointment as Sub Engineer (Civil) cannot be entertained because,

(i) the petitioner has not produced any tangible evidence on the record of the writ petition to show that as on 18-5-1997, posts of Sub Engineer (Civil) were available in the division where he had worked as a contract labour;

(ii) he has neither averred nor any document has been produced before the Court to show exact number of posts of Sub Engineer (Civil) which were available as on 18-5-1997 or 11-4-1999 or 5-2-1999 and the number of persons appointed against such posts. He has also not produced evidence to show that any person junior to him in the category of contract labour was selected and appointed as Sub-Engineer (Civil).

There is another reason for my disinclination to entertain the petitioner's prayer. He has not come up with the plea that the posts of Sub Engineer (Civil) were available as on 5-2-1999, the date on which

communication containing the factum of rejection of his candidature was sent to him. He has also not shown that as on today, any vacant post in the cadre of Sub Engineer (Civil) is available which can be offered to him. In this backdrop, any direction by the Court for his appointment as Sub Engineer (Civil) would compel the company - APCPDCL to terminate the services of one of the Sub Engineers who might have been appointed pursuant to the consideration made in terms of the policy contained in B.P.Ms.No. 36 dated 18-5-1997 and this cannot be done because the person who is likely to be affected by the Court's order is not a party to the writ petition.

In the result, the writ petition is dismissed.

G.S.SINGHVI, C.J.

February 21, 2007

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